



May 1, 2018

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

Dear Secretary Mnuchin,

**Regulatory Cooperation between the United States, Canada and Mexico – leading the world towards a new model of international coordination**

The capital markets support robust trade and investment within and between the United States, Canada and Mexico. As we look towards the third decade of the 21<sup>st</sup> century, it is vital that policymakers and regulators have the right tools to support the robust cross-border capital flows needed for economic growth and job creation. Effective regulatory cooperation is a vital component of those tools. We are writing to you with our perspective on how that cooperation can be strengthened between the United States, Canada and Mexico.

Since the inception of NAFTA in 1994, financial services have expanded significantly – both in terms of the volume of transactions and sophistication of financial instruments. At the same time, the financial services industry has been subjected to growing amounts of regulation. Much of these regulatory impulses have originated through the G20 and its associated fora, such as the FSB. The U.S., Canada and Mexico are all members of these groups.

The architects of NAFTA could not have anticipated the growth of regulation and how it would increasingly govern cross-border financial services in the 21<sup>st</sup> century. When NAFTA was created, a financial services committee was established as a platform for the three countries to ensure all three trading partners implemented the financial services aspects of the trade agreement. So, the foundations of the committee were in market access issues. By contrast, in 2018 barriers to cross-border financial services are more likely to arise from inconsistent regulation than from conventional ‘text-book’ trade barriers.

Therefore, a new mechanism, co-existing with the existing NAFTA financial services committee and housed outside NAFTA, to support regulatory cooperation between the



three countries is needed. SIFMA welcomes the news that the partner countries have begun work on establishing such a regulatory cooperation facility.

The existing forum between the U.S. and the EU can serve as a model for this new platform among NAFTA signatories. But the U.S./EU dialogue should be regarded as a starting point – not something to be replicated. While the U.S./EU Forum has many strengths and has been improved in recent years, there is still further to go in enhancing its effectiveness. In this regard, the new U.S./Canada/Mexico Forum should lead and not follow.

The architects of this new mechanism (Forum) have a fantastic opportunity to establish an ambitious system of regulatory cooperation. Establishing an effective coordination regime would yield benefits in terms of market coherence, cross-border investment and growth, and allow the U.S., Canada and Mexico to lead the world in regulatory cooperation and coordination, influencing the future shape of other bilateral, trilateral and multilateral fora. SIFMA believes that to maximize the effectiveness of this new Forum, it should be:<sup>1</sup>

- *Forward-looking* – Regulatory cooperation between the U.S., Canada and Mexico should be proactively used to identify potential cross-border divergences when policies are being devised. Relatedly, well-defined and clearly communicated timetables for the coordination of regulations between the three will be important to the success of the new Forum. At the most fundamental level, it is crucial that the dates for meetings of the group are arranged and announced well in advance, in the same way, for example, that G20 meetings are arranged and announced.
- *Supportive of Similar Outcomes* – Deference or mutual recognition to other regimes is a vital approach to successfully pursuing coordinated regulation across borders. These regulatory tools are even more vital in the context of a trading bloc like that to which the U.S., Canada and Mexico belong. Clear, detailed standards for comparability assessments as well as mechanisms for the ongoing assessment of regimes as rulemaking and implementation progress, will be necessary to make the new trilateral Forum a success.

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<sup>1</sup> These principles for regulatory cooperation arrangements are aligned with the Global Financial Markets Association's (GFMA) Principles for Achieving Consistent Regulatory Regimes and Supervisory Practices, April 2018, <http://www.gfma.org/correspondence/item.aspx?id=995>. SIFMA is a member of the GFMA from North America along with AFME in the EU and ASIFMA in Asia.



- *Predictable* – Clearly defined fact-based policy objectives will facilitate cooperation and should be set out by the three partners. Predictability enhances market certainty between these economies and within each of them.
- *Transparent* - To ensure the most pressing issues, with the greatest implications for financial services in the U.S., Canada and Mexico are resolved in a timely and appropriate manner, it is vital that the Forum allows for input from industry. The Forum, and its agenda-setting, should be underpinned by consistent means of consultation and dialogue with market participants and industry bodies. In addition, reasonable timelines will be necessary for market participants to consider and respond under.
- *Evidence-based* – Understanding the consequences of proposed regulatory actions domestically and on the other two economies should be paramount in evaluating the options available to regulators and rule writers. For that to happen, the work of the Forum should be supported by substantive, wide-ranging analysis.
- *Enhancing of Market Certainty* – Regulatory cooperation between the U.S., Canada and Mexico should include clear timelines for making consistency findings.
- *Strengthening of Supervisory Coordination* – While it will be important for the three economies to have major meetings clearly signaled in advance and held at regular intervals, regulatory cooperation should be regarded as a continuous process. Enhanced communication channels should be established between regulatory authorities through a principles-based approach to the interpretation and implementation of international standards, including more timely and comprehensive information sharing.
- *Supportive of conflict mitigation* – At present, in both multilateral and bilateral fora, the absence of flexibility by supervisory agencies to employ forbearance, no-action letters, or other dispute-resolution mechanisms, potentially prolongs and prevents countries from moving towards mutually satisfactory outcomes. Successful regulatory cooperation will require these concepts to be used much more extensively to ensure consistent rules and a level playing field between institutions in the three economies.
- *Proportionate* – Due regard should be considered where policies are designed to restrict cross-border financial activity to address identifiable local risk to market integrity and financial stability. In such circumstances, a new regulatory cooperation framework should help measures be designed in a targeted as way as possible.
- *Enhancing of Cross-Border Investments and Market Integrity* – Regulatory cooperation needs to strike the balance between facilitating frictionless cross-border



flows and price discovery and respecting the integrity of internal markets. The preservation of market integrity is a cornerstone for the functioning and attractiveness of all markets. Ex-ante and ex-post regulatory cooperation arrangement(s) help reduce operational complexity and increases the utility of supervisory oversight to foster the integrity of the marketplace.

The annex of this paper/letter/note sets out in more detail specific characteristics that SIFMA believes the new Forum should incorporate at inception to maximize its effectiveness.

### **Conclusion**

As the U.S., Canada and Mexico look to raise economic growth, increasing the contribution from the capital markets is important. These three economies have a unique opportunity to meaningfully improve regulatory cooperation in a way that tackles inconsistencies and frictions between countries' rules, increasing cross-border investment and strengthening the three economies. Design of a new mechanism will be important – ensuring that market participants who most directly understand the impact of regulation on cross-border business are able to input will be particularly important in differentiating the fora from what has gone before.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen", with a long horizontal flourish extending to the right.

Kenneth E. Bentsen, Jr.

CC:

- Lawrence Kudlow, National Economic Council
- Ambassador Robert Lighthizer, United States Trade Representative
- David Malpass, U.S. Treasury
- Heath Tarbert, U.S. Treasury
- Rebekah Goshorn Jurata, U.S. Treasury
- Douglas Bell, U.S. Treasury
- Matthew Swinehart, U.S. Treasury
- Everett Eissenstat, National Economic Council
- Mathew Haarsager, National Security Council / National Economic Council
- Daniel Bahar, U.S. Trade Representative
- Jim Sullivan, U.S. Department of Commerce
- Paul Thanos, U.S. Department of Commerce



## **Annex: The Mandate and Bylaws for a North American Financial Regulatory Forum**

### Mandate

The Parties shall undertake a transparent, accountable, and formal process that commits the Parties to holding regular consultations. The objectives of this process are to (i) implement internationally-agreed standards through outcome-based rulemaking; (ii) design and implement policies and practices that encourage equivalent outcomes in pursuit of financial stability and cross-border financial regulatory compliance; (iii) increase transparency of the policymaking and international standard-setting process; and (iv) ensure robust discussion on domestic standards to inform policy priorities. The Parties recognize that a shared approach to regulatory cooperation is a positive step toward addressing divergent approaches to financial regulation and supervision that can harm economic growth, fragment markets, and lessen financial stability.

The regulatory cooperation fostered by the Forum will align with recognized principles for regulatory cooperation and be:

1. Forward-looking.
2. Supportive of similar outcomes.
3. Predictable.
4. Transparent.
5. Evidence-based.
6. Enhancing of market certainty.
7. Strengthening of supervisory coordination.
8. Supportive of conflict mitigation.
9. Proportionate.
10. Enhancing of cross-border investments and market integrity.

### Structure and Procedures

*Structure:* The Forum shall have a co-chair from each Party, who shall report, respectively, to the U.S. Secretary of the Treasury, the Canadian Minister of Finance, and the Mexican Secretary of Finance and Public Credit. The Forum shall also include other representatives as appropriate from the U.S. Department of the Treasury (e.g., the Office of the Comptroller of the Currency, Federal Insurance Office), the Federal Reserve Board, the Securities and Exchange Commission, the Commodity Futures



Trading Commission, the Federal Deposit Insurance Corporation, and the Public Accounting Oversight Board, along with their Canadian and Mexican counterparts.

*Procedures:* The Forum shall develop procedures to ensure ongoing engagement with the private sector and other interested stakeholders on the issues under discussion.

The Forum shall endeavor to facilitate and exchange appropriate information and data among regulators, including discussions about potential impact of proposed rules.

The Forum shall develop a process, including the criteria for measuring compatibility of regulatory regimes, to allow mutual recognition of rules among jurisdictions.

The Forum shall consult on proposals in advance of international financial standards setting meetings.

The Forum will meet twice a year, and will include additional technical meetings and calls, as appropriate, between the biannual meetings. Ministers should meet once a year to discuss financial regulatory matters and review the work of the Forum.

The Forum shall issue a statement after every meeting.

The U.S. Treasury Department shall send to the Senate Banking and House Financial Services Committees a yearly report describing the Forum's activities to fulfill the objectives outlined in the mandate.